HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 590 of 2007

Between:

M/s Poddar Projects Limited,
Nacharam Industrial Area,
Hyderabad,
represented by its Manager (Finance) V.C. Jain.

... Appellant

And

The Presiding Officer,Labour Court-I,
Hyderabad & another.

... Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri C. Sridhar for
Shri C. Suryanarayana Rao

Counsel for respondent No.1 : Government Pleader for
Labour

July 30, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 25-6-2007 passed by the learned Single Judge in WVMP.No.546 of 2005 and WPMP.No.30314 of 2004 in Writ Petition No.23105 of 2004, whereby he continued ad interim order dated 14-12-2004 subject to the condition that the writ petitioner (the appellant herein) shall deposit an amount of Rs.47,000/- within six weeks and gave liberty to respondent No.2 workman to withdraw the same without furnishing security.

In the writ petition filed by it, the appellant has challenged order dated 31-8-2004 passed by Presiding Officer, Labour Court-I, Hyderabad (respondent No.1) under Section 33C-(2) of the Industrial Disputes Act, 1947 (for short, 'the Act').

It is borne out from the record that respondent No.2 was engaged as Bariman in the employment of the appellant on 16-11-1987. After availing leave in June, 1993, he reported for duty on 28-6-1993, but was not allowed to join. He then raised an industrial dispute, which was registered as I.D.No.730 of 1993. By an award dated 26-5-1995, Presiding Officer, Labour Court-III, Hyderabad directed the appellant to reinstate respondent No.2 subject to certain conditions. The operative part of the award reads as under:

> "In the result, the respondent is directed to take the petitioner on duty by protecting his past service. Since the overstayal of sanctioned leave was only for a period of 8 days, the management should take a lenient view of it, treating that he extended his leave by a letter dated 19-6-1993 addressed to Mr. A.K. Deb, Production In-charge of the establishment and the absence period to be treated as leave on "Loss of Pay". As the fault lies on both sides even if back wages are denied, the workman is to be paid with at least a sum of Rs.500/- in lieu of back wages. The respondent shall issue necessary orders to the petitioner to join on duty by sending the orders to the address given in the claim statement and that the petitioner should report for duty promptly within the 8 days on receipt of the orders, else he will forfeit his right to continue in the employment. Necessary orders shall be issued within 30 days of publication of the Award, else the respondent is liable for payment of full back wages after the expiry of the stipulated time. In case the management wants to contract of service with the workman, it may do so by paying compensation which can be fixed through arbitration or by natural settlement."

The appellant challenged the award in Writ Petition No.12711 of 1995. While admitting the writ petition on 23-6-1995, the learned

Single Judge stayed the implementation of the award subject to compliance of Section 17-B of the Act. Subsequently, the appellant withdrew the writ petition and asked respondent No.2 to report for duty on or before 14-8-1996. The latter complied with the direction given by the management. Respondent No.2 was taken on duty, but just after six days, he was transferred to M/s. Sree Sabari Mills, Trichy (State of Tamil Nadu). It appears that respondent No.2 did not join at Trichy and, therefore, he was placed under suspension and an enquiry was initiated against him on the charge of disobedience of the transfer order.

Respondent No.2 raised an industrial dispute by filing application under Section 2-A(2) of the Act, which was registered as I.D.No.157 of 2000. He pleaded that the management has terminated his service without holding enquiry and without giving him opportunity of hearing. The same was dismissed by the Labour Court as premature. Thereafter, respondent No.2 represented for payment of salary, but without any success. He then filed an application under Section 33-C(2) of the Act for payment of salary for the period from 20-8-1996 to 28-2-2002.

The appellant contested the application by contending that the workman had not carried out the order of transfer and, therefore, he is not entitled to wages.

After considering the rival pleadings and evidence, respondent No.1 passed order dated 31-8-2004, whereby he directed the management of the appellant to pay wages to respondent No.2 at the rate of Rs.2,200/- per month for the period from 20-8-1996 to 28-2-2002.

In the writ petition filed by it, the appellant has questioned the jurisdiction of respondent No.1 to entertain the application filed by

respondent No.2 under Section 33-C(2). On merits, it has been pleaded that respondent No.2 is not entitled to salary because he did not report for duty at the transferred place.

Initially, the learned Single Judge stayed the order of respondent No.1, but, after hearing the advocates for the parties, he passed the impugned order, the relevant portion of which reads as under:

> "In the facts and circumstances of the case, I deem it appropriate to continue the interim order, granted earlier, during pendency of the writ petition, subject to condition the writ petitioner deposits an amount of Rs.47,000/- (Rupees Forty Seven Thousand only) within a period of 6 (six) weeks from today, failing which, the interim order shall stand vacated automatically, without any further reference to the Court. On depositing such amount, the respondent/workman is entitled to withdraw the same, without furnishing any security.
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> Accordingly, the vacate stay petition i.e. WVMP.546/2005 and WPMP.30314 of 2004 are disposed of.
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> However, the Registry is directed to post the writ petition for final hearing immediately after Dasara Vacation, 2008."

We have heard learned counsel for the parties and perused the entire record.

Since the writ petition filed by the appellant against order dated 31-8-2004 is pending adjudication before the learned Single Judge, we do not consider it proper to express any opinion on the merits, else the cause of the either party may be prejudiced.

The admission of the writ petition indicates that the appellant has been able to make out an arguable case. However, that by itself, is not sufficient for staying the order passed by respondent No.1 under Section 33-C(2) in its entirety. The proceedings under Section 33-C(2) are in the nature of execution proceedings and an order made by the Labour Court in favour of the workman is akin to a money decree. Therefore, it cannot be said that the learned Single Judge committed

an error when he directed the appellant to deposit a sum of Rs.47,000/- as against the direction given by respondent No.1 for payment of Rs.1,47,400/- to respondent No.2.

In our opinion, the discretion exercised by the learned Single Judge to stay the operation of order dated 31-8-2004 passed by respondent No.1 subject to the condition of deposit of Rs.47,000/- by the appellant is just and equitable and does not call for interference under Clause 15 of the Letters Patent.

We are further of the view that the direction given by the learned Single Judge will not cause any injury, much less irreparable injury to the appellant. The balance of convenience is also against the staying of the order of respondent No.1 in its entirety.

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, WAMP.No.1182 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, C.J.

July 30, 2007

C.V. NAGARJUNA REDDY, J.

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